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VIA ELECTRONIC DELIVERY **EX PARTE**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-325
445 12th Street, S.W.
Washington D.C. 20554

Re: ***Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island*, WC Dkt. No. 08-24; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in Cox's Service Territory in the Virginia Beach Metropolitan Statistical Area*, WC Dkt. No. 08-49**

Dear Ms Dortch:

Fifteen months after filing its petition for forbearance in Rhode Island and more than 13 months after filing its petition for forbearance in parts of Virginia Beach, Verizon has now stated that it is withdrawing those petitions.[1] The undersigned parties file this letter to urge the Commission not to permit Verizon to terminate those proceedings but rather to promptly issue orders resolving those proceedings.

As a policy matter, allowing Verizon to withdraw its petitions at the last minute is unsound to say the least. Every time an incumbent LEC files a forbearance petition, competitors must incur enormous costs to oppose the petition, third parties such as cable companies must incur the substantial costs to produce information needed to assess the petition, and the Commission must allocate scarce administrative resources to review the petitions, draft orders, meet with interested parties and so on. This is a huge expenditure of resources. It is simply inappropriate to allow incumbent LECs to force such an expenditure without it at least resulting in some public benefit. That benefit should come in the form of an FCC order that resolves the issues raised in the proceedings, establishes a body of precedent and provides the industry with guidance as to how the FCC will address future forbearance petitions. If Verizon and other incumbents are allowed to withdraw a petition any time they believe

[1] *See* Letter of Dee May, VP, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 08-24, 08-49 (filed May 12, 2009).

that the FCC will deny the petition, the public is denied these benefits. Moreover, the incumbents are allowed to skew the jurisprudence in their favor by deciding which FCC decisions will be promulgated and which will not.[2] The FCC should not accede to being manipulated in this fashion. It is the agency itself, not private parties, that should determine the circumstances in which a final order shall be released in a proceeding.

Furthermore, as a legal matter, the FCC has the authority to rule on the Verizon petitions notwithstanding Verizon's attempt to withdraw those petitions. There is no requirement that the FCC accept Verizon's withdrawal. In other contexts, the FCC has given careful consideration to whether it should deny a request to withdraw a previously filed petition.[3] Alternatively, the FCC has the authority to rule on and issue an order on the merits of granting forbearance in Rhode Island and Virginia Beach *sua sponte*.[4] There is nothing in the language of Section 10 that precludes the FCC from determining that it is sound administrative practice to issue a ruling on a matter that it has investigated in depth, especially where issuing an order would provide helpful guidance to the industry in the future. In addition, Section 403 of the Act states that, the "Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing . . . concerning which any question may arise under any of the provision of this Act, or relating to the enforcement of any of the provisions of this Act." The FCC's authority to release an order addressing Verizon's petitions is buttressed by Section 4(i) of the Act, which states that "[t]he Commission may perform any and all acts . . . and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." These provisions provide the Commission with ample authority to act notwithstanding Verizon's withdrawal letter. The FCC should rely on that authority now to put an end to the incumbent LECs' manipulation of the forbearance process.

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[2] Verizon claims in its withdrawal filing that it is withdrawing the petitions because the D.C. Circuit has not yet ruled on Verizon's appeal of the FCC's denial of Verizon's "Six MSA" petitions. But this does not appear to be the real reason for Verizon's withdrawal. If it were, Verizon would have at least asked the FCC to delay its ruling on the Virginia Beach petition since the statutory deadline for ruling on that petition is not until June 29th. The real reason for Verizon's withdrawal is almost certainly that it is concerned that the FCC will reject its petitions using an analytical framework that is legally sustainable and that will make it less likely that Verizon can (prematurely) obtain forbearance in the future.

[3] *See, e.g., In the Matter of United Telephone Company of Kansas, United Telephone Company of Eastern Kansas and Twin Valley Telephone, Inc.; Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules; Petition for Waiver of Section 69.3(e)(11) of the Commission's Rules; Petition for Clarification or Waiver of Section 54.305 of the Commission's Rules*, Order, 24 FCC Rcd 4175 (2009) (in which the FCC did not automatically grant, but considered denying, a request for withdrawal).

[4] *See, e.g., In re Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, ¶ 97 (2005) (in which the FCC recognized that it has the right to act *sua sponte* in forbearance proceedings).

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), a copy of this notice is being filed electronically in the above-referenced dockets.

Respectfully submitted,

/s/ Thomas Jones
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